



February 13, 2009

HOUSE BILL No. 1024

DIGEST OF HB 1024 (Updated February 11, 2009 4:20 pm - DI 44)

Citations Affected: IC 22-2.

Synopsis: Family leave for smaller employers. Allows an employee who works for an employer that employs at least 20 employees but not more than 49 employees to take up to six work weeks of unpaid family leave to be with the employee's child or spouse for prenatal preparations or for the birth, adoption, serious illness, or injury of the employee's child, or the illness or injury of the employee's parent or spouse. Provides that an employee must work at least 30 hours per week to be eligible for family leave. Provides that an employer is not required to grant family leave to an employee who is among the highest paid 10% of employees. Requires an employer to notify an employee of the denial of family leave. Protects an employee's employment and benefit rights. Requires the commissioner of labor to enforce these provisions.

Effective: July 1, 2009.

Day, Candelaria Reardon

January 7, 2009, read first time and referred to Committee on Small Business and Economic Development.

February 12, 2009, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

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HB 1024—LS 6256/DI 102+



February 13, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1024

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-2-15 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]:

4 **Chapter 15. Family Leave**

5 **Sec. 1. This chapter applies after December 31, 2009.**

6 **Sec. 2. As used in this chapter, "child" means an individual:**

7 **(1) who is:**

8 **(A) the biological child of an employee;**

9 **(B) the adopted child of an employee;**

10 **(C) the foster child of an employee;**

11 **(D) the stepchild of an employee;**

12 **(E) the ward of an employee; or**

13 **(F) placed in the proposed adoptive home of an employee**
14 **under IC 31-19-7; and**

15 **(2) who is:**

16 **(A) less than eighteen (18) years of age; or**

17 **(B) mentally or physically incapacitated to the extent that**

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the individual is not self-sufficient.

Sec. 3. As used in this chapter, "Christian Science practitioner" means a Christian Science practitioner who is listed in The Christian Science Journal.

Sec. 4. As used in this chapter, "commissioner" refers to the commissioner of labor.

Sec. 5. As used in this chapter, "employee" means an individual who:

(1) has been employed for at least twelve (12) months by an employer from whom family leave is requested under this chapter; and

(2) worked at least one thousand five hundred (1,500) hours for the employer in the fifty-two (52) weeks immediately preceding the week that the individual begins a period of family leave under this chapter.

Sec. 6. As used in this chapter, "employer" means:

(1) an individual;

(2) a partnership;

(3) an association;

(4) a limited liability company;

(5) a corporation;

(6) a business trust; or

(7) a municipal corporation (as defined in IC 36-1-2-10);

that employs at least twenty (20) but not more than forty-nine (49) employees for each working day during each of twenty (20) or more calendar work weeks in the current or preceding calendar year.

Sec. 7. As used in this chapter, "family leave" means an absence from an employee's employment that is taken to carry out a family responsibility described in section 12 of this chapter.

Sec. 8. As used in this chapter, "health care provider" includes any of the following:

(1) A health care provider listed in the definitions set forth in IC 16-18-2-163.

(2) A Christian Science practitioner.

Sec. 9. As used in this chapter, "parent" refers to:

(1) a biological parent;

(2) a foster parent;

(3) an adoptive parent;

(4) a mother-in-law;

(5) a father-in-law;

(6) a stepparent; or

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(7) a legal guardian.

Sec. 10. As used in this chapter, "spouse" means the individual to whom an employee is married.

Sec. 11. As used in this chapter, "work week" means:

(1) a calendar week;

(2) a work week as defined in a labor contract; or

(3) a work period consisting of a fourteen (14) day period if:

(A) the employee is employed by a hospital or establishment engaged in the care of the sick, aged, or mentally ill; and

(B) the employee is subject to overtime compensation under 29 U.S.C. 207(j).

Sec. 12. Subject to sections 13 through 25 of this chapter, an employee is entitled to take family leave from the employee's employment equal to six (6) work weeks in any twelve (12) month period for any of the following reasons:

(1) To receive prenatal care or counseling related to the birth or care of the employee's child.

(2) To prepare for the birth of the employee's child during the six (6) weeks before the expected birth of the child.

(3) To give birth to the employee's child or recover from or attend the birth of the employee's child.

(4) To care for or visit with the employee's child or the employee's child's biological mother during the six (6) weeks after:

(A) the birth of the child; or

(B) the placement of the child in the employee's home by a court, licensed child placing agency, or county office of family and children.

(5) To attend:

(A) legal proceedings;

(B) interviews; or

(C) counseling sessions;

that are related to the placement of a child in the home of the employee by a court, licensed child placing agency, or county office of family and children.

(6) To visit or provide care and supervision for a child, parent, or spouse of the employee who suffers from an illness, injury, or other health or mental health condition.

(7) To accompany the employee's child, parent, or spouse to an appointment with a health care provider.

Sec. 13. This chapter does not grant a right of family leave to an

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employee who is employed by the employee's parent, spouse, or child.

Sec. 14. (a) This chapter does not grant a right of family leave to an employee who is among the highest paid ten percent (10%) of the employees employed by the employer, if the employer believes that to grant family leave to the employee would cause substantial and grievous economic injury to the operations of the employer.

(b) For the employer to deny a period of family leave to the employee, the employer must notify the employee of the denial of family leave at the time that the family leave is requested under section 19 of this chapter.

Sec. 15. This chapter does not mandate that salary or wages be paid to an employee on family leave unless the salary or wages are paid under any of the following:

- (1) An agreement between the employer and employee.
- (2) A labor contract between the employer and a representative of the employee.
- (3) A policy of the employer.

Sec. 16. This chapter does not prohibit the employee from taking leave granted under any of the following:

- (1) Another law.
- (2) A contractual agreement between the employee and the employer or a representative of the employee and the employer.
- (3) A policy of the employer.

Sec. 17. For purposes of calculating family leave taken by an employee under section 12 of this chapter, an employee shall be treated as taking family leave as follows:

- (1) One-half (1/2) day of family leave if, during a day, an employee takes not more than three and three-fourths (3 3/4) hours of leave from work that the employer otherwise would have scheduled for the employee, excluding any period routinely authorized by the employer for meals or rest.
- (2) One (1) day of family leave if, during a day, an employee takes more than three and three-fourths (3 3/4) hours of leave from work that the employer otherwise would have scheduled for the employee, excluding any period routinely authorized by the employer for meals or rest.

Sec. 18. If an employee intends to take family leave that consists of an absence from employment:

- (1) for less than an entire workday; or

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(2) to attend a scheduled appointment with a health care provider;
the employee must make a reasonable effort to schedule the family leave so that the leave does not unduly disrupt the employer's operations.

Sec. 19. (a) An employee must give reasonable advance notice to the employer of the following:

- (1) The employee's intent to take family leave.
- (2) The expected duration of the family leave.
- (3) The purpose for which the employee intends to use the family leave.

(b) If the employee intends to extend a family leave beyond the time specified in the employee's initial notice, the employee shall notify the employer of the expected duration of the extended leave within a reasonable time after the employee discovers the need for the extended leave.

(c) If an emergency occurs that cannot be reasonably anticipated, an employee may comply with subsection (a) by giving an oral notice to the employee's employer within a reasonable time before or after the employee begins the family leave.

Sec. 20. (a) If an employee takes family leave under section 12 of this chapter for more than three (3) consecutive days that the employee has been scheduled to work, the employer may require the employee to provide certification:

- (1) by the health care provider providing services as provided in section 12(1), 12(3), or 12(7) of this chapter; or
- (2) by a person involved in an activity described in section 12(5) of this chapter;

that is sufficient under subsection (b) or (c). The employee shall provide the employer with the certification not later than ten (10) days after the employee returns to work.

(b) This subsection applies if an employee takes family leave for a reason described in section 12(1), 12(3), or 12(7) of this chapter. The certification under subsection (a) is sufficient if the certification states the following:

- (1) The name of the person who needs the employee's care and the relationship of that person to the employee.
- (2) The reason for the family leave.
- (3) The date the condition requiring the employee to take family leave began.
- (4) The probable duration of the condition.
- (5) An estimate of the amount of time that the employee will

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need to care for the employee's child, spouse, or parent.

(c) This subsection applies if an employee takes family leave for a reason described in section 12(5) of this chapter. The certification under subsection (a) is sufficient if the certification states the following:

- (1) The reason for the family leave.
- (2) The location where the employee will attend the activity that is the reason for the family leave.
- (3) An estimate of the amount of time that is required for the employee to attend the activity that is the reason for the family leave.

Sec. 21. (a) If an employer adopts a written policy under subsection (b), family leave taken by an employee of the employer must be in compliance with the policy.

(b) An employer may adopt a written policy to govern the following:

- (1) The scheduling of family leave for part of a workday under section 18 of this chapter.
- (2) Notices to be provided under section 19 of this chapter.

The policy may not interfere unreasonably with the exercise of the family responsibilities described in section 12 of this chapter.

(c) Except as provided in section 14 of this chapter, the application of and granting of leave under this chapter must be uniform to all of the employees of the employer.

(d) To be applicable to an employee, a written policy adopted under subsection (b) must be:

- (1) conspicuously and continuously posted in the area in which the employee is routinely employed; or
- (2) disseminated to the employee in a manner reasonably intended to give notice for at least thirty (30) working days before the employee takes family leave to which the policy applies.

Sec. 22. (a) Except as provided in subsection (b), if an employee takes family leave in compliance with sections 12 through 25 of this chapter and subsequently returns to work, the employee's employer shall immediately do one (1) of the following upon the employee's return to work.

- (1) Return the employee to the position of employment that the employee had before the employee took the family leave, if the employer has not filled or eliminated the employee's previous position.
- (2) Place the employee in another position of employment that

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provides compensation, benefits, working hours, working shifts, and other terms and conditions equivalent to the position of employment that the employee had before the employee took the family leave, if the employer has filled the employee's previous position.

(b) If an employee returns to work before the end of the family leave that the employee specified in the employee's notice to the employer under section 19 of this chapter, the employer shall comply with subsection (a) within a reasonable time after the employee returns to work. A delay in compliance may not extend beyond the end of the family leave specified in the employee's notice.

Sec. 23. Except as provided in:

- (1) section 24 of this chapter;
- (2) an agreement; or
- (3) an employer's policy;

an employee who is on family leave is not entitled to compensation, additional seniority, or any other benefit that the employee would be entitled to receive if the employee were available for work.

Sec. 24. During the time an employee is on family leave, the employer shall continue to provide group health insurance coverage on the same terms and conditions in effect at the time the leave began. For an employee who is required to make a contribution for participation in the group health insurance plan while the employee is not on leave, the employer shall make group health insurance premium contributions during the time the employee is on family leave only if the employee continues to make the required contributions while on leave.

Sec. 25. An employer and employee may agree to alternative employment conditions or terms during the time the employee is on family leave. An agreement under this section does not limit an employee's right to family leave.

Sec. 26. A notice setting forth the rights of employees under this chapter, in a form approved by the commissioner, must be:

- (1) conspicuously and continuously posted by the employer in the area in which the employee is routinely employed; or
- (2) disseminated to the employee in a manner reasonably intended to give notice.

Sec. 27. A person may not discharge or otherwise discriminate against a person who does any of the following:

- (1) Opposes a practice prohibited under this chapter.
- (2) Files a charge, institutes a proceeding, or causes another

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person to file a charge or institute a proceeding concerning the rights and duties under this chapter.

(3) Assists or intends to assist in an investigation or a proceeding concerning the rights and duties under this chapter.

(4) Testifies or intends to testify in an investigation or a proceeding concerning the rights and duties under this chapter.

Sec. 28. The commissioner may adopt rules under IC 4-22-2 to establish uniform standards to implement this chapter.

Sec. 29. The commissioner shall enforce this chapter.

Sec. 30. (a) A person who is aggrieved by an alleged violation of this chapter may file a written complaint with the commissioner not later than thirty (30) days after the earlier of:

(1) the date that the person discovers; or

(2) the date that the person should have discovered; the violation.

(b) If a complaint is filed with the commissioner under subsection (a), the commissioner shall investigate the complaint and attempt to resolve the complaint informally.

(c) If a dispute is not resolved informally within fourteen (14) days after the commissioner receives the complaint, the commissioner shall initiate a proceeding under IC 4-21.5-3-6 and adjudicate the complaint under IC 4-21.5-3. The commissioner shall join the complainant and each person who is alleged to have committed a violation under this chapter as parties to the proceeding. Unless the parties to the proceeding agree to a later date or the interests of justice require, the presiding officer in the proceeding shall schedule a hearing on the complaint to be held not later than sixty (60) days after the commissioner receives the complaint.

Sec. 31. The commissioner may issue any reasonable order to remedy a violation under this chapter. The order may include the following:

(1) An order that the employee be reinstated in the employee's former position as described in section 22 of this chapter.

(2) A requirement that the violator reimburse the complainant for compensation and benefits lost as a result of the violation.

(3) A requirement that the violator pay the complainant for the reasonable attorney's fees incurred to:

(A) bring the person's complaint; and

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1 (B) participate as a party in the informal and formal
2 proceedings under this chapter.

3 (4) A requirement that the violator pay a civil penalty to the
4 complainant in an amount not to exceed one thousand dollars
5 (\$1,000).

6 Sec. 32. (a) An employer is not excused from complying with a
7 provision of a collective bargaining agreement or other
8 employment benefit program or plan in effect on January 1, 2010,
9 unless the provision, program, or plan substantially conflicts with
10 this chapter.

11 (b) An employer may not reduce employment benefits the
12 employer provides that are in excess of the benefits required by
13 this chapter solely because of the enactment of this chapter.

14 (c) This section expires July 1, 2011.

15 Sec. 33. (a) The commissioner shall educate employers and
16 employees, in a manner the commissioner determines to be
17 appropriate, regarding the rights and responsibilities of employers
18 and employees under this chapter.

19 (b) This section expires January 1, 2011.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred House Bill 1024, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 15, delete "eight (8)" and insert "**six (6)**".

and when so amended that said bill do pass.

(Reference is to HB 1024 as introduced.)

RESKE, Chair

Committee Vote: yeas 7, nays 5.

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